

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN MACK COLE**, on February 8, 2001 at 3:15 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Royal Johnson, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Don Ryan (D)
Sen. Corey Stapleton (R)
Sen. Mike Taylor (R)
Sen. Tom Zook (R)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Misti Pilster, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 319, 1/31/2001
Executive Action: SB 398; SB 272

HEARING ON SB 319

Sponsor: SENATOR MACK COLE, SD 4, Hysham

Proponents: Governor Judy Martz
Representative Alan Olson, HD 8
Bob Gilbert, City of Colstrip

Michael Lange, Self
William Penn, KnowWatt
Tom Keating, Self
Duane Ankney, Western Energy
Rae Olson, PPL Montana
Bob Pavlovich, International Brotherhood of
Electrical Workers, # 233
Riley Johnson, National Federation of Independent
Business
Charles Brooks, Billings Chamber of Commerce
Gail Abercrombie, Montana Petroleum Assn.
Dennis Lopach, Northwestern Corporation
Webb Brown, Montana Chamber of Commerce
Margaret Morgan, Montana Petroleum Marketers
Jerry Driscoll, Montana Building Trades Council
Owen Orndorff, Yellowstone Energy
Gary Wiens, Montana Electric Cooperatives, Assn.
John Alke, Montana Dakota Utilities
Fran Marceau, United Transportation Union
Byron Roberts, Montana Building Industry Assn.
Terry Leishman, International Union of Operating
Engineers #400
Russ Ritter, Montana Resources
Jay Reardon, United Steel Workers #72
John Youngberg, Montana Farm Bureau
Ellen Porter, Louisiana Pacific
Keith Allen, International Brotherhood of Electrical
Workers, # 233
Cary Hegreberg, Montana Wood Products Assn.
Page Dringman, Montana Assn. Of Realtors
Barry "Spook" Stang, Montana Motor Carriers
Steve Pilcher, Montana Stockgrowers Assn.
Tony Ritter, Decker Coal
Jim Mockler, Montana Coal Council
Tom Ebzery, CMS Oil and Gas
Don Quander, Montana Large Customer Group
Pat Keim, Burlington Northern Santa Fe Railroad
Don Allen, Western Environmental Trade Assn.

Opponents: Tom Schneider, Northern Plains Resource Council
Don Bailey, Self
Clint McRae, Self
Steve Gilbert, Self
Patrick Judge, Montana Environmental Information
Center
Geri Small, Northern Cheyenne Tribe
Gail Small, Self

Hilda Moss, Northern Cheyenne Tribe
Jeff Barber, Montana Wildlife Federation
Matthew Leow, Montana Public Interest Research Group
John Wilson, Montana Trout Unlimited
Debbie Smith, Natural Resource Defense Council
Betty Whiting, Montana Assn. Of Churches
Don Judge, AFL-CIO
Betty Beverly, Montana Senior Citizens

Opening Statement by Sponsor:

SENATOR MACK COLE, SD 4, submitted written testimony,
EXHIBIT(ens32a01) .

Proponents' Testimony:

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Governor Judy Martz, submitted written testimony,
EXHIBIT(ens32a02) .

Representative Alan Olson, HD 8, noted that Musselshell County sits on one of the largest, highest quality coal beds in Montana. There is a possibility of a mine mouth plant and this bill will definitely aid in that process. Along with power plants comes a tax base which is needed to run schools and fund other forms of local and state government, as well as good paying jobs. He urged a "do pass" vote from the committee.

Bob Gilbert, City of Colstrip, submitted written testimony from the Mayor of Colstrip, **EXHIBIT**(ens32a03) .

Michael Lange, Self, submitted written testimony and a committee report from the Montana AFL-CIO, **EXHIBIT**(ens32a04) ,
EXHIBIT(ens32a05) .

William Penn, KnoWatt, submitted written testimony,
EXHIBIT(ens32a06) .

Tom Keating, Self, submitted written testimony,
EXHIBIT(ens32a07) .

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Duane Ankney, Western Energy, submitted written testimony,
EXHIBIT(ens32a08) .

Rae Olson, PPL Montana, stated that her company is made up of 500 employees who live, work, and recreate in Montana. The Colstrip facilities are among the cleanest burning coal facilities west of the Mississippi. They are interested in building more generation facilities in the west and are partners in a 600 megawatt facility currently under construction at Sundance, Arizona and a 900 megawatt facility in Griffith, Arizona. They are also in the planning stages for a 1200 megawatt facility near Walla Walla, Washington. The strength of this legislation is that it allows PPL to continue to comply with all the federal regulations for environmental protection and with all the standards in the state Environmental Protection Act without the duplication of state review. They support the shortening of the time periods within which the department will declare an application complete as this would contribute to certainty in the process.

Bob Pavlovich, International Brotherhood of Electrical Workers # 233, stated that this legislation will bring progress to the plant they hope to build in Butte and urged a "do pass" from the committee.

Riley Johnson, National Federation of Independent Business, noted that SB 319 creates jobs, makes better schools and communities, and all of that is good for small business. Colstrip is certainly a good example.

Charles Brooks, Billings Chamber of Commerce, read a brief statement. "The Chamber supports responsible and timely development of new generating facilities, as well as new coal mines, which those facilities will provide for. We also support the necessary railroads and infrastructure needs that would occur. We support the initiative and provisions in federal law that provides for the transfer of select coal rights in southeastern Montana to the state, specifically the transfer of Otter Creek Tracts one and two. Hopefully, the ownership of these tracts will be transferred during 2001."

Gail Abercrombie, Montana Petroleum Assn., explained that there are two ways natural gas can benefit Montana. For the short-term, that is the gas-fired generation that is available and can be installed quickly. In terms of coal-fired, natural gas is needed to over-fire a coal-fired plant to reduce the Nitrogen Oxide (NOx) emissions. She submitted a map and a pamphlet on stream permitting, **EXHIBIT(ens32a09), EXHIBIT(ens32a10).**

Dennis Lopach, Northwestern Corporation, replied that his company believes the development of additional generation within the existing environmental controls would be extremely beneficial to the ratepayers of Montana.

Webb Brown, Montana Chamber of Commerce, explained the opportunity for good jobs, tax base, and power.

Margaret Morgan, Montana Petroleum Marketers, supported the legislation and believed it involves an important part in the economic development of Montana's future. New jobs and new energy supply will benefit the industry.

Jerry Driscoll, Montana Building Trades Council, professed that this bill fits perfectly with the resolution passed out earlier by Mike Lange. No major generation in this state has been built since Colstrip 4. The workers who build power plants are leaving the state and they need jobs here.

Owen Orndorff, Yellowstone Energy, said his company was responsible for the last power plant built in the state. They were required to comply with the Major Facility Siting Act (MFSA). In 1993, they began preparing an application. By 1995, they were still working on the application. It was seven volumes long and cost \$1.2 million to finish. The project reduced emissions in the Billings airshed and yet, it was deemed necessary to comply with the Act. He urged the committee to look at a larger transmission line if generation is exempted.

Gary Wiens, Montana Electric Cooperatives, Assn., submitted written testimony, **EXHIBIT(ens32a11)**.

John Alke, Montana Dakota Utilities, supported the legislation.

Fran Marceau, United Transportation Union, voiced his support of the bill and the amendments offered by the sponsor. The bill doesn't change any environmental standards, and will result in faster permitting while protecting the environment. The legislation has the potential to promote a long term energy supply which will benefit every resident and business in the state, attract new business, and create new jobs.

Byron Roberts, Montana Building Industry Assn., urged the committee to pass the legislation.

Terry Leishman, International Union of Operating Engineers #400, expressed his support of the bill.

Russ Ritter, Montana Resources, noted that his group shut down their mine in Butte on June 30, 2000 as a result of their inability to purchase electricity at a given and economical price. The last year they were in operation, they spent \$13 million for power to run the mine, averaging about \$36 per megawatt hour. Had they purchased power today to run on a years

basis, it would cost \$130 million. This legislation will not solve the immediate problem, but it will streamline the process so that companies can begin marketing one of the largest assets in eastern Montana, which is super compliant coal. The largest deposit of super compliant coal in the United States is located in eastern Montana. As long as it remains there, it will do no one any good.

Jay Reardon, United Steel Workers #72, believed that this legislation is consistent with responsibly developing natural resources and moving forward to create new, good paying jobs.

John Youngberg, Montana Farm Bureau, explained that many of the people he represents are irrigators and they depend on a consistent, economical source of power.

Ellen Porter, Louisiana Pacific, announced that her company has a mill in Missoula and has recently been adversely affected by electric rates. She urged the committee's support of the legislation as a long term solution.

Keith Allen, International Brotherhood of Electrical Workers #233, declared that this bill is exactly what Montana needs.

Cary Hegreberg, Montana Wood Products Assn., claimed that the companies he represents are some of the largest industrial consumers of power in the state. They consume power adding value to raw materials. The more value they add to raw materials, the more power they will need.

Page Dringman, Montana Assn. Of Realtors, indicated that this bill eliminates some of the time in review processes, while ensuring compliance with all substantive environmental standards.

Barry "Spook" Stang, Montana Motor Carriers, declared that in order for the trucking industry to remain a viable industry in Montana, they depend on people to produce products to haul in and out of the state. He urged a favorable recommendation from the committee.

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Steve Pilcher, Montana Stockgrowers Assn., reminded the committee that this is one small step in the right direction of meeting the energy needs of the people of Montana, including agriculture.

Tony Ritter, Decker Coal, strongly supported SB 319.

Jim Mockler, Montana Coal Council, proclaimed that the largest value added project in Montana is Colstrip. He submitted a comparison of emissions between last year's fires and Colstrip, **EXHIBIT(ens32a12)**.

Tom Ebzery, CMS Oil and Gas, submitted written testimony, **EXHIBIT(ens32a13)**.

Don Quander, Montana Large Customer Group, indicated that affordable power in the short term is a serious concern for businesses and jobs in Montana. The long term also matters and the health of the state economy requires that we look toward the future. This bill offers a fresh look at the MFSA. Consolidated permitting of transmission lines and pipelines works fairly well and has proved useful. By contrast, the generation siting provisions of the act have not been beneficial and have become a hurdle for development in Montana.

Pat Keim, Burlington Northern Santa Fe Railroad, exclaimed that the answer to the current situation in Montana relative to the power supply and pricing has to rest on the supply side. They are concerned with the industrial shutdowns and cutbacks in the state.

Don Allen, Western Environmental Trade Assn., endorsed the legislation.

Opponents' Testimony:

Tom Schneider, Northern Plains Resource Council, submitted written testimony, **EXHIBIT(ens32a14)**.

Don Bailey, Self, submitted written testimony, **EXHIBIT(ens32a15)**.

Clint McRae, Self, submitted written testimony for Nick Golder, **EXHIBIT(ens32a16)**.

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Steve Gilbert, Self, submitted written testimony, **EXHIBIT(ens32a17)**.

Patrick Judge, Montana Environmental Information Center, declared that the MFSA is truly one of the bedrock environmental laws and must be maintained. Current conditions are similar to 1973 as we have somewhat of a national energy crisis with high prices, enormous pressure to develop energy resources in the state, and an enormous need to ensure that development is done right. As

written, the MFSA allows for the Department of Environmental Quality (DEQ) to require reasonable cost effective mitigation for significant impacts and to protect the environment, the human health, safety, and socioeconomic welfare of Montanans. The DEQ can approve or deny a certificate, which is a substantive act. The Montana Environmental Policy Act (MEPA) and MFSA are different laws that work together and compliment each other. This act was passed, in part, to act as a streamlining measure. Montanans have a fundamental right to a clean and healthful environment, which has been unanimously confirmed by the Montana Supreme Court. There is a chance of increased litigation if laws such as MFSA and MEPA are removed.

Geri Small, Northern Cheyenne Tribe, was concerned that SB 319 will gut the permitting process of power plants. She stated that we deserve to have responsible laws that will carefully allow citizens the right to participate in permitting decisions. The Northern Cheyenne people are directly impacted by both existing and proposed power plants because their land is being surrounded by massive energy development. The energy industry should not determine the state's energy policy.

Gail Small, Self, professed that it's important that the MFSA provide a process by which residents of the area have an opportunity to express their concerns. These types of laws are the only process by which people have the right to participate in such decisions. She relayed a personal story of racism during her high school experience.

Hilda Moss, Northern Cheyenne Tribe, opposed the legislation.

Jeff Barber, Montana Wildlife Federation, wondered why Continental Energy wasn't at the hearing in support of the bill. He discussed several different environmental laws and how those laws make the state look at the cumulative impacts of development. The Continental Energy plants are proposing to use \$2.4 million gallons of water per day. Gutting Montana's environmental laws is doing nothing to improve the state's economy. He asked the committee to table the bill.

Matthew Leow, Montana Public Interest Research Group, submitted written testimony, **EXHIBIT(ens32a18)**.

John Wilson, Montana Trout Unlimited, submitted written testimony, **EXHIBIT(ens32a19)**.

Debbie Smith, Natural Resource Defense Council, believed that this bill was unnecessary. In Montana, there is an energy pricing problem and this legislation could be extremely

expensive. This legislation would eliminate the state's review of power generation facilities and new gas pipeline construction. The consumers need the state's assistance to make deregulation work, not the suppliers. In order to make deregulation work, Montana and the region needs to improve the efficiency of energy use, diversify supply resources, and begin planning for sustainable new generation to meet future energy growth. This legislation isn't consistent with the Governor's endorsed principle to streamline regulatory processes while protecting public health, safety, and the environment. She urged the committee to table the bill.

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Betty Whiting, Montana Assn. Of Churches, asked the committee to table the bill. They believe the current review process is working. She called upon everyone to continue to seek ways to safeguard the quality of the air, land, and water which is needed to lead healthy lives. Government officials and agencies need to enact and enforce the laws which are required to promote community health and well-being.

Don Judge, AFL-CIO, referenced the resolution previously passed out by Mike Lange. It stated that his group believes that economic development partners need to work together for responsible development of natural resources and assure that the siting and permitting processes are simplified, become less costly, and are efficiently completed in a timely manner without diminishing existing environmental standards. For the past 27 or 28 years, his group has adopted strong resolutions encouraging economic development of our natural resources and in doing so in a safe and healthy manner, protecting the environment. Over the years, the labor movement has used the MFSA to its advantage. Labor unions, coal miners, and operating engineers currently rely upon the MFSA to prevent the construction of the Tongue River Railroad, which they believe will cost jobs in the mining, generation, and rail industries. Over the years, those laws have been used to make sure the Colstrip facilities had scrubbers on them. This gave members of the Plumbers and Pipefitters unions more than 60,000 man hours worth of additional work to make sure the air produced in those coal facilities was clean, breathable, and wouldn't harm the workers or environment in which they lived. The MFSA and environmental laws have been used to stop the construction of the faulty Haines pipeline, which was a disaster. The operating engineers and laborers went to court to prevent a pipeline that was being constructed in a way that was sure to blow up and cause major damage to communities and the environment. It is being projected by the Western Systems Coordinating Council that energy production will rise by 50% serving the California grid over the next two years. In a

forecast by the California Independent Systems Operator, the generation proficiency of some 7000 megawatts will, by 2003, be exactly the opposite and there will be a 7000 megawatt surplus serving California. That swing in California is largely due to the fact that there are 20 plants that are likely to be approved in time to be operational by 2003 according to the California Energy Commission. His group believes that Continental Energy's proposal to build a facility in Butte to generate 500 megawatts of power proves that the current act works.

Betty Beverly, Montana Senior Citizens, articulated her group's concern for Montana and the environment. She noted that they were against deregulation as well.

Questions from Committee Members and Responses:

SENATOR MIKE HALLIGAN asked who would permit dams if they were eliminated from the MFSA. **Art Compton, DEQ**, replied that the only way a new hydroelectric facility would come under the MFSA would be if it exceeded the 250 megawatt threshold or it was a re-licensing effort under the Federal Energy Regulatory Commission (FERC). There is a provision of the MFSA that keeps the review threshold at 50 megawatts for a hydro facility under FERC jurisdiction. They just completed a re-licensing effort with Avista Corp's Cabinet Gorge and Noxon Rapids facility.

There is another re-licensing effort under way with PPL's nine facilities on the Madison and Missouri Rivers. That is essentially how a hydro facility would be addressed by the act.

SENATOR HALLIGAN told of a controversy 20 years ago about the Kootenai Falls in Lincoln County and wondered if Montana would play any role if that project was proposed again and it was over 250 megawatts. **Mr. Compton** didn't recall what that project's design capacity was, but believed it was below 250 megawatts. The statutory language in the act refers to keeping the threshold at 50 megawatts for re-licensing efforts under FERC jurisdiction. He would have to check the language to see if new hydro proposals, which are subject to FERC review, would also be subject to that 50 megawatts. **SENATOR HALLIGAN** was curious as to how big the proposed pipelines are to remove methane gas from coal beds. **Mr. Compton** answered that it depends on how much coal bed methane (CBM) development Montana will host. Gathering lines often have an inside diameter of 16 inches. He didn't know of any CMB pipeline infrastructure that would be larger than the 25 inch threshold proposed in the bill.

SENATOR STEVE DOHERTY inquired how long it would take to build a 500 megawatt power plant if construction began the day this bill passed. **Jerry Driscoll** declared that construction would take two years after the parts were manufactured and on-site. **SENATOR**

DOHERTY then asked how long it would take to manufacture the parts, get them on-site, and establish the site. **Mr. Driscoll** claimed that the largest problem would be the generator. The rest of the parts are standard. It would probably take about three years.

SENATOR DOHERTY questioned the cost of new coal fired generation in today's market and what it would be in three years. **Tom Schneider** exclaimed that large scale coal fired generation is not cost effective. **SENATOR DOHERTY** wondered if this bill passed and Montana had an energy plan which said we need smaller plants scattered across the state to more efficiently produce the electricity needed, whether Montana would have any ability to determine or have a say in how that plan would be adopted. **Mr. Schneider** professed the only potential would be if the Public Service Commission (PSC) actually implemented integrated resource planning rules on the default supplier. If Montana Power Company (MPC) developed their resource portfolio on a competitive acquisition process and incorporated the guidelines that MPC developed, there might be some control. However, without MFSA the lever is substantially gone.

SENATOR DOHERTY proclaimed that the Montana Supreme Court recently spoke in a unanimous decision guaranteeing us the right to a clean and healthful environment. Given the current legislation, he wanted an explanation of how the bill would be compatible with the constitutional directive. **Tom Keating** articulated that the SO₂ and NO_x standards are in the statutes and the DEQ will give air and water quality permits based on the discharge from any facility that is built. A 500 megawatt plant will probably run \$400-600 million. Nobody will invest that kind of money if the plant can't meet those standards or obtain those permits.

SENATOR DOHERTY inquired whether any of the proponents wanted to have the bill pass and invite further litigation. **Jim Mockler** affirmed that there is nothing in the constitution requiring the MFSA. It is not uniform and does not apply to all industry.

SENATOR MIKE TAYLOR asked whether this act would overturn the federal rules and environmental standards. **Mr. Keating** contended that this act does not have the specific standards of air and water quality as a part of the matrix. The air and water quality standards in the statutes are primarily under MEPA. Those standards are, in most cases, more strict than the federal standards. **SENATOR TAYLOR** cited that MEPA would still apply. **Mr. Keating** purported that the standards in the statutes under any permitting process will apply. **SENATOR TAYLOR** declared that if this bill passed, there would still be certain requirements

that would have to be followed with regards to environmental standards. **Mr. Keating** elaborated that the MFSA is an unnecessary redundancy to the MEPA.

Closing by Sponsor:

SENATOR COLE reiterated that the MFSA does not have any effect on environmental standards. New facilities will still require public hearings, comment periods, and require environmental impact statements (EIS). MFSA is still needed for pipelines and power lines to ensure they are constructed in the best possible routes. This bill will only remove stipulations for generation plants. Montana will eventually have to build generation plants to avoid California's problems. This legislation will help provide energy for Montana's homes and industries, along with providing jobs for Montana citizens, thereby boosting the economy.

EXECUTIVE ACTION ON SB 398

Motion: **SENATOR TAYLOR** moved that **SB 398 DO PASS**.

Substitute Motion: **SENATOR JOHNSON** made a substitute motion that **SB 398 BE AMENDED** with **SB039801.ate**, **EXHIBIT(ens32a20)**.

Discussion:

SENATOR DOHERTY asked if there was any reason to limit the bill to ambient air quality standards as opposed to any environmental standards. **SENATOR JOHNSON** supposed that if you don't name the standards, you can't carry them very far. **SENATOR DOHERTY** wondered if there were any other standards besides ambient air quality standards. **David Clem, DEQ**, didn't believe there were any other standards that could be violated. There are source specific standards to certain facilities that are referred to as new source performance standards. The DEQ can't exempt anybody from those and they aren't proposing to exempt anyone from the ambient air quality standards. There are other requirements in the permitting process.

SENATOR JOHNSON desired to know about the noise pollution from the generators. **Mr. Clem** affirmed that the DEQ does deal with noise in the permitting process, but it is more a part of the MEPA analysis which goes along with the permit.

SENATOR BEA MCCARTHY wanted clarification that this is an emergency rather than an ongoing procedure and that the plant would still be under the original permitting. **Mr. Clem** noted

that the facilities now coming in have an air quality permit that must be complied with and it doesn't yet contain the requirements for the proposed diesel generators until the full permit process has been gone through. **SENATOR MCCARTHY** recited that the plant already has everything except the air quality permit. **Mr. Clem** said that was correct. **SENATOR MCCARTHY** asked if the permit for the ambient air quality would complete all of the permits for the plant. **Mr. Clem** thought the plants can't, under existing statutes, violate ambient air quality standards and that statement reaffirms that.

SENATOR ALVIN ELLIS questioned that as a result of the previous answer, the amendment doesn't really affect the impact of the legislation. **Mr. Clem** believed that it clarifies that the plants can't violate ambient standards.

SENATOR DOHERTY desired to know how difficult the amendment would be to enforce. **Mr. Clem** answered that if someone violates the standard, whether they tell the DEQ or not, they are subject to enforcement from the department. **SENATOR DOHERTY** inquired as to how the DEQ would check to see if companies were violating ambient air quality standards or not. **Mr. Clem** noted that in reality, it is done mostly through monitoring, which is an after-the-fact discovery of the violation. **SENATOR DOHERTY** pressed on as to how often monitoring was done. **Mr. Clem** didn't have the numbers, but there is a monitoring network across the state. They do monitor in areas that they believe may be troublesome. In addition, there are certain facilities that are required to monitor. For example, the Louisiana Pacific facility in Missoula is going to be required to do some NOx monitoring starting in June.

Vote: Substitute motion **carried 10-0**. **SENATOR STAPLETON** was excused.

SENATOR TAYLOR wanted clarification on the amendment that the emergency power generation can't be sold outside of Montana or sold to other sources. **Mr. Clem** agreed that was correct.

Substitute Motion: **SENATOR DOHERTY** made a substitute motion that **SB 398 BE AMENDED** with **SB039802.ate** excluding numbers 3 and 4, **EXHIBIT** (ens32a21).

SENATOR TOM ZOOK found that number 2 on page 1 was nothing more than a political statement and disagreed with that. He didn't believe that deregulation is the cause of all of today's problems and disagreed with that portion of the amendment.

SENATOR WALT MCNUTT thought that the federal government deems a two year time frame as an emergency time frame, rather than six months. **Mr. Clem** replied that there are exclusions from certain federal requirements for temporary sources, which is defined as not to exceed two years.

SENATOR ELLIS agreed that the energy shortage is a product of regulation. For years, regulators have not allowed power companies to install new facilities because they didn't want to face the cost of the incremental increase in power costs. The result is that we've seen a decline in the reserve capacity from 45% to only 5%. Then, when there is a situation including a hot summer combined with short water resources, a shortage is created. When there is a shortage and most people are protected by regulation, there is no decrease in demand so the incremental increases that various units need to meet their requirements spike to astronomical levels.

SENATOR JOHNSON objected the first "WHEREAS" in number two. Deregulation did not cause any of these people to go out of business. People made corporate decisions not to buy power on contracts that were in place at 2.25 cents.

SENATOR DOHERTY responded that people will have the ability to put up devices that create pollution without a permit. Our standard regulatory framework says that someone can do that if they are in possession of a permit from the state because it has been determined that the air is a resource that belongs to all of us. Given the constraints of a clean and healthful environment, there needs to be a justification for that. If that isn't done, a regulatory framework is being changed and litigation will be invited. As to the notion that deregulation has not cost people jobs or that it is a supply problem, the deregulated market is too expensive and allowed the prices to go up.

Vote: Substitute motion **failed 4-6 with Doherty, Halligan, McCarthy, and Ryan voting aye. SENATOR STAPLETON** was excused.

Substitute Motion: **SENATOR HALLIGAN** made a substitute motion that **SB 398 BE AMENDED** with **SB039803.ate** excluding number 2, **EXHIBIT (ens32a22)**.

SENATOR ZOOK asked if the model talked about during the hearing didn't address some of **SENATOR DOHERTY'S** concerns about possible lawsuits. **SENATOR HALLIGAN'S** understanding was that the industry person making the application wouldn't know that the model had been looked at.

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Mr. Clem replied that when an application is filed, it is evaluated to see if all of the information is there, not whether it is there and meets technical requirements. That is a completeness determination that may take 30 days to review, as allowed by the statute. For the power generators that have come in so far, that completeness review has been expedited and were able to have a turnaround time of a couple of days.

SENATOR COLE sought to find out what the time difference would be between what was being stricken and inserted in the proposed amendment. **Mr. Clem** exclaimed that it could range anywhere from a few days to a month, depending on the workload.

Vote: Substitute motion **carried unanimously.**

Substitute Motion/Vote: **SENATOR ELLIS** made a substitute motion that **SB 398 BE AMENDED** with **SB039802.ate** only including the second and third "WHEREAS" in number 2, while striking the word "also." **Substitute motion carried unanimously.**

Vote: Motion **carried unanimously** that **SB 398 do pass as amended.**

EXECUTIVE ACTION ON SB 272

Motion: **SENATOR MCNUTT** moved that **SB 272 BE TABLED.**

SENATOR MCNUTT withdrew his motion.

Motion: **SENATOR HALLIGAN** moved that **SB 272 BE AMENDED** with **SB027201.ate**, **EXHIBIT(ens32a23).**

SENATOR JOHNSON objected to the fact that the same wording could go on his bill, SB 243, and then there would not be two bills going through the same process.

SENATOR HALLIGAN replied that he would be happy to put the amendments on SB 243, but his chances of getting the amendments on in the House were slim to none.

SENATOR ZOOK explained that he was going to oppose the amendment because the consumer pays this rather than the power companies.

SENATOR DOHERTY noted that the cheapest source of electrical energy is conservation.

SENATOR DON RYAN wanted to continue to encourage that this program works. Everyone has people in their district that

utilize this program and it needs to be available for those constituents.

SENATOR TAYLOR agreed that this amendment doesn't force anyone to charge more than 2.4%. If they go higher, they will have to explain those rates to their consumers.

SENATOR MCNUTT declared that his biggest problem came from a member of the minority who did not vote for the USBC.

Vote: Motion carried 9-2 with Johnson and Zook voting no.

Motion/Vote: **SENATOR HALLIGAN** moved that **SB 272 DO PASS AS AMENDED**. Motion carried 7-4 with Cole, Johnson, Stapleton, and Zook voting no.

ADJOURNMENT

Adjournment: 6:35 P.M.

SEN. MACK COLE, Chairman

MISTI PILSTER, Secretary

MC/MP

EXHIBIT (ens32aad)